

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 7, “Appeals and Hearings,” and Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments will conform the Department’s rules to statutory changes made in 2011 Iowa Acts, House File 562. Those changes:

- Shorten the time limit for appeal of a child abuse finding from six months to 90 days.
- Clarify that failure on the part of the person responsible for the care of a child to provide adequate medical or mental health treatment or to provide adequate supervision meets the definition of child abuse.
- Clarify when a finding of child abuse shall be placed on the Central Abuse Registry.
- Remove obsolete provisions for review of abuse cases that were placed on the Registry before 1997.

The legislation provides that, with certain exceptions, information on founded abuse cases shall not be placed on the Registry when the Department:

- Finds an allegation of physical abuse but determines that the resulting injury was minor, isolated, and unlikely to reoccur; or
- Finds an allegation of abuse by failure to provide adequate supervision or adequate clothing but determines that the resulting risk to the child’s health and welfare was minor, isolated, and unlikely to reoccur.

Even in those circumstances, the founded abuse shall be placed on the Registry if:

- The case was referred for juvenile or criminal court action due to the acts or omissions of the alleged perpetrator of abuse;
- The Department has determined within the past 18 months that other acts or omissions of the alleged perpetrator met the definition of abuse; or
- The Department determines that the alleged perpetrator will continue to pose a danger to children.

The legislation also provides that the name of the alleged perpetrator of founded sexual abuse shall not be placed on the Registry when the alleged perpetrator is aged 13 or younger, and allows the court to find good cause for not listing the name when the alleged perpetrator is aged 14 through 17. All other child abuse information in these cases will be listed on the Registry.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

Any interested person may make written comments on the proposed amendments on or before July 19, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 235A and sections 232.68 and 232.71D as amended by 2011 Iowa Acts, House File 562.

The following amendments are proposed.

ITEM 1. Amend paragraph 7.5(4)“d” as follows:

d. Abuse standard.

(1) For appeals regarding ~~child and~~ dependent adult abuse, a hearing shall be held if the appeal is made within six months after official notification of the action as provided in Iowa Code section ~~235A.19~~ 235B.10.

(2) For appeals regarding child abuse, a hearing shall be held if the appeal is made within 90 days after official notification of the action as provided in Iowa Code section 235A.19 as amended by 2011 Iowa Acts, House File 562.

(3) The day after the official notice is mailed is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

ITEM 2. Amend rule ~~441—175.21(232,235A)~~, definitions of “Adequate food, shelter, clothing or other care” and “Denial of critical care,” as follows:

“Adequate food, shelter, clothing, medical or mental health treatment, supervision or other care” means that food, shelter, clothing, medical or mental health treatment, supervision or other care which, if not provided, would constitute a denial of critical care.

“Denial of critical care” ~~is~~ means the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision or other care necessary for the child’s health and welfare when financially able to do so, or when offered financial or other reasonable means to do so, and shall mean any of the following:

1. to 6. No change.

7. Failure to provide for the ~~proper~~ adequate supervision of the child ~~to the extent that there is danger of the child suffering injury or death, and which that~~ a reasonable and prudent person would ~~exercise~~ provide under similar facts and circumstances when the failure results in direct harm or creates a risk of harm to the child.

8. No change.

ITEM 3. Amend subrule 175.25(7) as follows:

175.25(7) Determining placement on central abuse registry. A determination of whether the report data and disposition data of a confirmed case of child abuse is subject to placement on the central abuse registry pursuant to Iowa Code ~~Supplement subsection 232.71D(3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562, shall be made on each assessment.

ITEM 4. Amend rule 441—175.32(232,235A) as follows:

441—175.32(232,235A) Case records. The assessment case record shall contain the child protective assessment summary as described in 441—175.26(232) and any related correspondence or information which pertains to the assessment or to the child and family. The name of the person who made the report of child abuse shall not be disclosed to the subjects of the report. The child protective assessment summary has two parts.

1. Report and disposition data as described in 175.26(1). Subjects of the report have access to report and disposition data, including, where applicable, confirmation of placement on the central abuse registry for abuse reports meeting the criteria pursuant to Iowa Code ~~subsection 232.71D(3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562. Form 470-3240, Child Protective Services Assessment Summary, shall be submitted to the central abuse registry only if the abuse is confirmed and determined to meet the criteria pursuant to Iowa Code ~~subsection 232.71D(3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562.

2. No change.

175.32(1) and 175.32(2) No change.

ITEM 5. Amend rule 441—175.39(232) as follows:

441—175.39(232) Founded child abuse. Reports of child abuse where abuse has been confirmed shall be placed on the central abuse registry as founded child abuse for ten years under any of the circumstances specified by Iowa Code ~~Supplement subsection 232.71D(3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562. Reports of denial of critical care by failure to provide adequate clothing or failure

to provide adequate supervision and physical abuse where abuse has been confirmed and determined to be minor, isolated, and unlikely to reoccur shall not be placed in the central abuse registry as a case of founded child abuse as specified by Iowa Code ~~Supplement subsections 232.71D(2) and (3)~~ section 232.71D as amended by 2011 Iowa Acts, House File 562. The confirmed abuse shall be placed on the registry unless all three conditions are met. ~~Minor abuse shall be placed on the registry if there is a prior confirmed abuse.~~

ITEM 6. Rescind and reserve rule ~~441—175.40(235A)~~.

ITEM 7. Amend ~~441—Chapter 175~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 232.68 and 232.71D as amended by 2011 Iowa Acts, House File 562, sections 232.67, 232.69, 232.70, 232.71B, 232.71C and 232.72 to 232.77 and Iowa Code chapter 235A as amended by 2011 Iowa Acts, House File 562.